

By: Metcalf

H.B. No. 1510

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the response and resilience of certain utilities to
3 major weather-related events or natural disasters.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 36.402(a), Utilities Code, is amended to
6 read as follows:

7 (a) In this subchapter, "system restoration costs" means
8 reasonable and necessary costs, including costs expensed, charged
9 to self-insurance reserves, deferred, capitalized, or otherwise
10 financed, that are incurred by an electric utility due to any
11 activity or activities conducted by or on behalf of the electric
12 utility in connection with the restoration of service and
13 infrastructure associated with electric power outages affecting
14 customers of the electric utility as the result of any tropical
15 storm or hurricane, ice or snow storm, flood, or other
16 weather-related event or natural disaster that occurred in calendar
17 year 2008 or thereafter. System restoration costs include
18 mobilization, staging, and construction, reconstruction,
19 replacement, or repair of electric generation, transmission,
20 distribution, or general plant facilities. System restoration
21 costs shall include reasonable estimates of the costs of an
22 activity or activities conducted or expected to be conducted by or
23 on behalf of the electric utility in connection with the
24 restoration of service or infrastructure associated with electric

1 power outages, but such estimates shall be subject to true-up and
2 reconciliation after the actual costs are known. System
3 restoration costs also include reasonable and necessary
4 weatherization and storm-hardening costs incurred, as well as
5 reasonable estimates of costs to be incurred by the electric
6 utility, but such estimates shall be subject to true-up and
7 reconciliation after the actual costs are known.

8 SECTION 2. Chapter 36, Utilities Code, is amended by adding
9 Subchapter J to read as follows:

10 SUBCHAPTER J. LOWER COST FINANCING MECHANISM FOR SECURITIZATION
11 FOR RECOVERY OF SYSTEM RESTORATION COSTS

12 Sec. 36.407. LOWER COST FINANCING MECHANISM FOR
13 SECURITIZATION FOR RECOVERY OF SYSTEM RESTORATION COSTS; PURPOSE
14 AND DEFINITIONS. (a) Except as otherwise specifically provided in
15 this subchapter, the same procedures, standards, and protections
16 for securitization authorized in Subchapter I and, to the extent
17 made applicable to Subchapter I, Subchapter G, Chapter 39, apply to
18 the lower cost financing mechanism for securitization of transition
19 costs (or "system restoration costs") as set forth in Subchapter I.
20 To the extent any conflict exists between the provisions of this
21 subchapter and Subchapter I or, to the extent made applicable by
22 Subchapter I, Subchapter G, Chapter 39, in cases involving the
23 securitization of system restoration costs under this subchapter,
24 the provisions of this subchapter control.

25 (b) The purpose of this subchapter is to make available a
26 lower cost and supplemental financing mechanism to allow an
27 electric utility to obtain timely recovery of system restoration

1 costs under Subchapter I through securitization and the issuance of
2 transition bonds (or "system restoration bonds") by an issuer other
3 than the electric utility or an affiliated special purpose entity.
4 Financing of system restoration costs pursuant to this subchapter
5 is hereby recognized to be a valid and essential public purpose.

6 (c) The Texas Electric Utility System Restoration
7 Corporation shall be created pursuant to this subchapter as a
8 special purpose public corporation and instrumentality of the state
9 for the essential public purpose of providing a lower cost
10 financing mechanism available to the commission and an electric
11 utility to attract low-cost capital to finance system restoration
12 costs.

13 (d) System restoration bonds issued consistent with this
14 subchapter will be solely the obligation of the issuer and the
15 corporation (as borrower, if applicable) and will not be a debt of
16 or a pledge of the faith and credit of the state.

17 (e) System restoration bonds issued consistent with this
18 subchapter shall be nonrecourse to the credit or any assets of the
19 state and the commission.

20 (f) This subchapter does not in any way limit or impair the
21 commission's jurisdiction under this title to regulate the rates
22 charged and the services rendered by electric utilities in this
23 state.

24 (g) An electric utility receiving the proceeds of
25 securitization financing under this subchapter shall not be
26 required to provide utility services to the corporation or the
27 state as a result of receiving such proceeds except in their role as

1 customers of the electric utility, nor shall this subchapter create
2 any obligation of the corporation or any issuer to provide any
3 electric services to the electric utility or its customers.

4 (h) As used in this subchapter:

5 (1) "corporation" means the Texas Electric Utility
6 System Restoration Corporation.

7 (2) "issuer" means the corporation or any other Texas
8 corporation, public trust, public instrumentality, or other entity
9 that issues system restoration bonds approved by a financing order.

10 (3) For purposes of this subchapter, "qualified
11 costs," as defined by Section 39.302 and as used in Subchapter G,
12 Chapter 39, also includes all costs of establishing, maintaining,
13 and operating the corporation and all costs of the corporation and
14 any issuer in connection with the issuance and servicing of the
15 system restoration bonds, all as approved in the financing order.

16 (4) Except as otherwise specifically provided in this
17 subchapter, the defined terms provided in Subchapter I and, if made
18 applicable by Subchapter I, Subchapter G, Chapter 39, have the same
19 meaning in this subchapter.

20 Sec. 36.408. CREATION OF THE CORPORATION. (a) The
21 corporation shall be incorporated as a nonprofit corporation and
22 instrumentality of the state, and shall perform the essential
23 governmental function of financing system restoration costs in
24 accordance with this subchapter. The corporation shall perform
25 only those functions consistent with this subchapter, shall
26 exercise its powers through a governing board, and shall be subject
27 to the regulation of the commission. The corporation shall have a

1 legal existence as a public corporate body and instrumentality of
2 the state separate and distinct from the state.

3 (b) Assets of the corporation shall not be considered part
4 of any state fund. The state shall not budget for or provide any
5 general fund appropriations to the corporation, and the debts,
6 claims, obligations, and liabilities of the corporation shall not
7 be considered to be a debt of the state or a pledge of its credit.
8 The corporation shall be self-funded. Prior to the imposition of
9 transition charges (or "system restoration charges"), the
10 corporation may accept and expend for its operating expenses such
11 funds as may be received from any source, including financing
12 agreements with the state, a commercial bank, or another entity to
13 finance the corporation's obligations until the corporation
14 receives sufficient transition property to cover its operating
15 expenses as financing costs, and to repay any short-term borrowing
16 under any such financing agreement.

17 (c) The corporation shall have the powers, rights, and
18 privileges provided for a corporation organized under Chapter 22,
19 Business Organizations Code, subject to the express exceptions and
20 limitations set forth in this subchapter.

21 (d) An incorporator selected by the executive director of
22 the commission shall prepare the articles of incorporation of the
23 corporation under Chapter 22, Business Organizations Code, which
24 articles shall be consistent with the provisions of this
25 subchapter.

26 (e) State officers, departments, and agencies are
27 authorized to render services to the corporation within their

1 respective functions, as may be requested by the commission or the
2 corporation.

3 (f) The corporation and any issuer may retain such
4 professionals, financial advisors, and accountants as it may deem
5 necessary to fulfill its duties under this subchapter and may
6 determine their duties and compensation, subject to approval of the
7 commission.

8 (g) The governing body of the corporation shall be a board
9 of directors that shall consist of five members appointed by the
10 commission. All official action of the governing body shall
11 require the favorable vote of a majority of the board members
12 present and voting at any meeting of the board of directors.

13 Sec. 36.409. POWERS AND DUTIES OF THE CORPORATION. (a) The
14 corporation shall, in each instance subject to the prior
15 authorization of the commission, participate in the financial
16 transactions contemplated by this subchapter. The corporation
17 shall engage in no other business activities except those
18 activities provided for in this subchapter and those ancillary and
19 incidental thereto. Neither the corporation nor any issuer shall
20 apply any proceeds of system restoration bonds or system
21 restoration charges to any purpose not specified in a financing
22 order, or to any purpose in excess of the amount allowed for such
23 purpose in the order, or to any purpose in contravention of the
24 order.

25 (b) The governing board of the corporation shall, pursuant
26 to the provisions of this subchapter, have the power to employ or
27 retain such persons as are necessary to perform the duties of the

1 corporation.

2 (c) The corporation may:

3 (1) Acquire, sell, pledge, and transfer transition
4 property as necessary to effect the purposes of this subchapter. In
5 connection therewith, the corporation may agree to such terms and
6 conditions as it deems necessary and proper, consistent with the
7 terms of a financing order, (i) to acquire transition property and
8 to pledge such transition property, and any other collateral, (a)
9 to secure payment of system restoration bonds issued by the
10 corporation, together with payment of any other qualified costs, or
11 (b) to secure repayment of any borrowing from any other issuer of
12 system restoration bonds, or (ii) to sell the transition property
13 to another issuer, which may in turn pledge such transition
14 property, together with any other collateral, to the repayment of
15 system restoration bonds issued by the issuer together with any
16 other qualified costs;

17 (2) Issue system restoration bonds on terms and
18 conditions consistent with a financing order;

19 (3) Borrow funds from an issuer of system restoration
20 bonds to acquire transition property, and pledge such transition
21 property to the repayment of any borrowing from an issuer, together
22 with any related qualified costs, all on terms and conditions
23 consistent with a financing order. The corporation may also borrow
24 funds for initial operating expenses as specified in Section
25 36.408;

26 (4) Sue or be sued in its corporate name. The
27 corporation has the authority to intervene as a party before the

1 commission or any court in this state in any matter involving the
2 corporation's powers and duties;

3 (5) Negotiate and become a party to such contracts as
4 necessary, convenient, or desirable to carry out the purposes of
5 this subchapter; and

6 (6) Engage in corporate actions or undertakings that
7 are permitted for nonprofit corporations in this state and that are
8 not prohibited by, or contrary to, the provisions of this
9 subchapter.

10 (d) The corporation shall maintain separate accounts and
11 records relating to each electric utility that is collecting system
12 restoration charges for all charges, revenues, assets,
13 liabilities, and expenses relating to that utility's related system
14 restoration bond issuances.

15 (e) The governing board of the corporation shall be
16 prohibited from authorizing any rehabilitation, liquidation, or
17 dissolution of the corporation, and no such rehabilitation,
18 liquidation, or dissolution of the corporation shall take effect as
19 long as any system restoration bonds are outstanding unless
20 adequate protection and provision has been made for the payment of
21 the bonds pursuant to the documents authorizing the issuance of the
22 bonds. In the event of any rehabilitation, liquidation, or
23 dissolution, the assets of the corporation shall be applied first
24 to pay all debts, liabilities, and obligations of the corporation,
25 including the establishment of reasonable reserves for any
26 contingent liabilities or obligations, and all remaining funds of
27 the corporation shall be applied and distributed as provided by an

1 order of the commission.

2 (f) Prior to the date that is two years and one day after
3 which the corporation no longer has any payment obligation with
4 respect to any system restoration bonds, including any obligation
5 to any issuer of any system restoration bonds outstanding, the
6 corporation is prohibited from filing and shall have no authority
7 to file a voluntary petition under the Federal Bankruptcy Code, as
8 it may, from time to time, be in effect, and neither any public
9 official nor any organization, entity, or other person shall
10 authorize the corporation to be or to become a debtor under the
11 Federal Bankruptcy Code during such period. The state covenants
12 that it will not limit or alter the denial of authority under this
13 subsection or subsection (e), and the provisions of such
14 subsections are hereby made a part of the contractual obligation
15 that is subject to the state pledge set forth in Section 39.310.

16 (g) The corporation shall prepare an operating budget
17 annually that shall be submitted for approval to the commission. If
18 requested by the commission, the corporation shall prepare and
19 submit an annual report containing, among other appropriate
20 matters, the annual operating and financial statements of the
21 corporation.

22 Sec. 36.410. COMMISSION REGULATION OF THE CORPORATION. The
23 commission shall regulate the corporation as provided for in this
24 subchapter. Such regulation shall be concomitant with the
25 commission's regulation of public utilities. Notwithstanding such
26 regulation, the corporation is not a public utility.

27 Sec. 36.411. FINANCING ORDER. (a) This section applies to

1 the commission's issuance of a financing order under this
2 subchapter.

3 (b) Except as otherwise specifically provided in this
4 subchapter, the provisions in Subchapter I and, to the extent made
5 applicable to Subchapter I, Subchapter G, Chapter 39, addressing
6 the commission's issuance of a financing order apply to the
7 commission's issuance of a financing order under this subchapter.

8 (c) The corporation and any issuer shall be a party to the
9 commission's proceedings addressing the issuance of a financing
10 order along with the pertinent electric utility.

11 (d) A financing order issued under this subchapter shall, in
12 addition to the requirements of Subchapter I (as applicable):

13 (1) Require the sale, assignment, or other transfer of
14 certain specified transition property created by the financing
15 order to the corporation (in the manner contemplated by Section
16 39.308), and following such sale, assignment, or transfer, system
17 restoration charges paid under any financing order shall be
18 created, assessed, and collected as the property of the
19 corporation, subject to subsequent sale, assignment, or transfer by
20 the corporation as authorized under this subchapter.

21 (2) Authorize either:

22 (A) the issuance of system restoration bonds by
23 the corporation secured by a pledge of such specified transition
24 property, and the application of the proceeds of such system
25 restoration bonds (net of issuance costs) to the acquisition of the
26 transition property from the electric utility; or

27 (B) the acquisition of specified transition

1 property from the electric utility by the corporation, financed (i)
2 by a loan by an issuer to the corporation of the proceeds of system
3 restoration bonds (net of issuance costs), or (ii) by the
4 acquisition by an issuer from the corporation of such transition
5 property, and in each case, the pledge of such transition property
6 to the repayment of such loan or system restoration bonds, as
7 applicable;

8 (3) Authorize the electric utility to serve as
9 collection agent to collect the system restoration charges and
10 transfer those collected charges to the corporation, the issuer, or
11 a financing party, as appropriate.

12 (e) After issuance of the financing order, the corporation
13 shall arrange for the issuance of system restoration bonds as
14 specified in the financing order by it or another issuer selected by
15 the corporation and approved by the commission.

16 (f) System restoration bonds issued pursuant to a financing
17 order under this section are secured only by the related transition
18 property and any other funds pledged under the bond documents, and
19 no assets of the state or electric utility shall be subject to
20 claims by such bondholders. Notwithstanding the provisions in
21 Subchapter G, Chapter 39, following assignment of the transition
22 property, the electric utility shall not have any beneficial
23 interest or claim of right in such system restoration charges or in
24 any transition property.

25 Sec. 36.412. SEVERABILITY. Effective on the date the first
26 system restoration bonds associated with system restoration costs
27 are issued under this subchapter, if any provision in this title or

1 portion of this title is held to be invalid or is invalidated,
2 superseded, replaced, repealed, or expires for any reason, that
3 occurrence does not affect the validity or continuation of this
4 subchapter, Subchapter I, as it applies to this subchapter,
5 Subchapter G, Chapter 39, as it applies to this subchapter, or any
6 part of those provisions, or any other provision of this title that
7 is relevant to the issuance, administration, payment, retirement,
8 or refunding of system restoration bonds or to any actions of the
9 electric utility, its successors, an assignee, a collection agent,
10 the corporation, an issuer, or a financing party, and those
11 provisions shall remain in full force and effect.

12 SECTION 3. Section 37.051, Utilities Code, is amended by
13 adding Subsection (d) to read as follows:

14 (d) Notwithstanding any other provision of this title, an
15 electric utility may, but shall not be required to, obtain a
16 certificate to install, own, or operate a generation facility with
17 a capacity of ten megawatts or less.

18 SECTION 4. Section 37.056(c)(4)(E), Utilities Code, is
19 amended to read as follows:

20 (E) the probable improvement of service or
21 lowering of cost to consumers in the area if the certificate is
22 granted, including any potential economic or reliability benefits
23 associated with dual fuel and fuel storage capabilities; and

24 SECTION 5. Subchapter F, Chapter 104, Utilities Code, is
25 amended by adding Section 104.259 to read as follows:

26 Sec. 104.259. PRIORITIES DURING NATURAL GAS CURTAILMENT.

27 (a) If the curtailment of natural gas is necessary during a state

1 of disaster as declared by the governor or an extreme weather
2 emergency as defined in Section 104.258, a gas utility shall
3 observe the following priorities for the continued delivery of gas
4 in descending order:

5 (1) deliveries of natural gas by gas utilities to
6 residences, hospitals, schools, churches, and other human needs
7 customers, and deliveries to local distribution companies that
8 serve human needs customers.

9 (2) deliveries of natural gas by gas utilities to
10 electric generation facilities that serve human needs customers.

11 (3) deliveries of natural gas by gas utilities to
12 small industrial and regular commercial loads, defined as those
13 customers using less than 3,000,000 cubic feet of gas per day, and
14 delivery of gas for use as pilot lights or in accessory or auxiliary
15 equipment essential to avoid serious damage to industrial plants;

16 (4) deliveries of natural gas by gas utilities to
17 large users of gas for fuel as raw material where an alternate fuel
18 source cannot be used and operation and plant production would be
19 curtailed or completely cease when gas is curtailed;

20 (5) deliveries of natural gas by gas utilities to
21 large users of gas for boiler fuel or other fuel users where an
22 alternate fuel source can be used. This category is not to be
23 determined by whether or not a user has actually installed
24 alternate fuel facilities, but whether or not an alternate fuel
25 could be used.

26 SECTION 6. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2021.